

FS Agreement No _____ 0x-PA-11xx
Cooperator Agreement No. _____

PARTICIPATING AGREEMENT
between
USDA, FOREST SERVICE,
and

This PARTICIPATING AGREEMENT is hereby entered into by and between the USDA Forest Service, _____, hereinafter referred to as the Forest Service and the _____, hereinafter referred to as the _____, under the authority of the Cooperative Funds and Deposits Act of December 12, 1975, Pub. L. 94-148, 16 U.S.C. 565a1 – a3, as further authorized by Division F, Title IV, Sec. 417 of the Consolidated Appropriations Act 2008 (P.L. 110-161) and/or Wyden Amendment, Section 323(a) of the Department of Interior and Related Agencies Appropriations Act, 1999 as included in P.L. 105-277, Div. A., Section 101 (e) as amended by P.L. 107-63, Sec. 330.

A. PURPOSE:

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

C. THE FOREST SERVICE SHALL:

- 1.
- 2.

D. THE _____ SHALL:

- 1.
- 2.

E. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. FOREST SERVICE ACKNOWLEDGED IN PUBLICATION AND AUDIOVISUALS. Forest Service support shall be acknowledged in **any** publications and audiovisuals developed as a result of this instrument.
2. COLLECTION OF AMOUNTS DUE THE FEDERAL GOVERNMENT. Pursuant to 31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B, any funds paid to a cooperator in excess of the amount to which the cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding may reduce the debt by:
 - a. Making an administrative offset against other requests for reimbursements.

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- b. Withholding advance payments otherwise due to the cooperator.
- c. Taking other action permitted by statute.

Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt.

3. FUNDING EQUIPMENT AND SUPPLIES. Federal funding under this instrument is not available for reimbursement of recipient/cooperator purchase of equipment (and supplies).
4. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
5. RETENTION AND ACCESS REQUIREMENTS FOR RECORDS. The Forest Service, Inspector General, or Comptroller General, through any authorized representative, shall have access to and the right to examine all records related to this instrument. As used in this provision, "records" includes books, documents, accounting procedures and practices, and other data regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. All records pertinent to this agreement shall be retained for a period of 3 years.
6. MODIFICATION. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed. The Forest Service is not obligated to fund any changes not properly approved in advance.
7. NONDISCRIMINATION. The recipient/cooperator shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e-16), which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 as amended (29 USC 794) which prohibits discrimination on the basis of disabilities. The nondiscrimination statement which follows shall be posted in primary and secondary recipient/cooperator offices, at the public service delivery contact point and included, in full, on all materials regarding such recipients'/cooperators' programs that are produced by the recipients/cooperators for public information, public education, or public distribution:

"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)"

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

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If the material is too small to permit the full statement to be included, the material will at minimum include the statement, in print size no smaller than the text, that ***"This institution is an equal opportunity provider."***

8. **PROPERTY IMPROVEMENTS.** Improvements placed on National Forest System land at the direction of either of the parties, shall thereupon become property of the United States, and shall be subject to the same regulations and administration of the Forest Service as other National Forest improvements of a similar nature. No part of this instrument shall entitle the cooperator to any share or interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.
9. **LEGAL AUTHORITY.** The cooperator has the legal authority to enter into this instrument, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the project.
10. **PARTICIPATION IN SIMILAR ACTIVITIES.** This instrument in no way restricts the Forest Service or the Cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals.
11. **EXTENSION OF PERFORMANCE PERIOD.** The Forest Service, by written modification may extend the performance period of this instrument for a total duration not to exceed 5 years from its original date of execution.
12. **TERMINATION.** Any of the parties, in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration.

Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

Excess funds shall be refunded within 60 days after the effective period.

13. **PRINCIPAL CONTACTS.** The principal contacts for this instrument are:

Forest Service Project Contact

Cooperator Project Contact

Phone:
FAX:
E-Mail:

Phone:
FAX:
E-Mail:

Forest Service Administrative Contact

Cooperator Administrative Contact

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Phone:
FAX:
E-Mail:

Phone:
FAX:
E-Mail:

14. AVAILABILITY OF FUNDS. Funds in the amount of \$ _____ are currently available for performance of this instrument through _____. The Forest Service's obligation for performance of this instrument beyond this date is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Forest Service for any payment may arise for performance under this instrument beyond _____, until funds are made available to the Forest Service for performance and until the recipient/cooperator receives notice of availability by written modification by the Forest Service.

15. ELECTRONIC FUNDS TRANSFER (EFT) (5/04): The recipient/cooperator shall designate a financial institution or an authorized payment agent through which a federal payment may be made in accordance with US Treasury Regulations, Money and Finance at 31 CFR 208, which requires that federal payments are to be made by EFT to the maximum extent possible. A waiver may be requested and payments received by check by certifying in writing that one of the following situations apply:

- a. The payment recipient does not have an account at a financial institution.
- b. EFT creates a financial hardship because direct deposit will cost the payment recipient more than receiving a check.
- c. The payment recipient has a physical or mental disability, or a geographic, language, or literacy barrier.

In order to receive EFT payments the recipient/cooperator shall register in the Central Contractor Registry (CCR). You may register by going to www.ccr.gov and following the instructions provided on line. For assistance, contact the CCR Assistance Center at 888-227-2423 or 269-961-4725

16. DAVIS-BACON OR SERVICE CONTRACT ACT. Federal wage provisions (Davis-Bacon or Service Contract Act) are applicable to any contract developed and awarded under this instrument where all or part of the funding is provided with Federal funds. Davis-Bacon wage rates apply on all public works contracts in excess of \$2,000 and Service Contract Act wage provisions apply to service contracts in excess of \$2,500. The Forest Service will award contracts in all situations where their contribution exceeds 50 percent of the costs of the contract. If a cooperator is approved to issue a contract it shall be awarded on a competitive basis.

17. COPYRIGHTING. The cooperator is granted sole and exclusive right to copyright _____, including the right to publish and vend throughout the world in any language and in all media and forms, in whole or in part, for the full term of copyright and all renewals thereof in accordance with this instrument. However, the cooperator shall not sell, or grant copyrights to a third-party designee who intends to sell, the document as a profit-making venture. No original text or graphics

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produced and submitted by the Forest Service shall be copyrighted. The Forest Service reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal government purposes. This right shall be transferred to any sub-agreements or subcontracts. This provision includes:

- a. The copyright in any work developed by _____ under this instrument.
- b. Any rights of copyright to which _____ purchases ownership with any Federal contributions.

18. PUBLICATION SALE. The cooperator may sell any publication resulting from the project. The publication may initially be sold at fair market value which is defined in this instrument to cover costs of development, production, marketing, and distribution. After the costs of development and production have been recovered, fair market value is defined in this instrument to cover the costs of marketing, printing, and distribution only. Fair market value must exclude any in-kind or Federal government contributions to the total costs of the project.

19. PAYMENT/REIMBURSEMENT. Reimburse the cooperator for the Forest Service's proportionate share, _____ percent of actual expenses incurred, not to exceed \$ _____, reduced by program income, and other Federal and nonfederal cash contributions, as shown in the incorporated Financial Plan. If program income generated from the project exceeds the cooperator's actual expenses, the Forest Service share is zero. The cooperator is approved to submit _____ billing(s). The Forest Service will make payment for its proportionate share of project costs upon receipt of an invoice. Each invoice shall display the cooperator's actual expenditures to date of the invoice (not just the Forest Service share of actual expenditures), displayed by separate cost elements as documented in the Financial Plan, less program income and other Federal and nonfederal cash contributions and previous Forest Service payments. The invoice should be forwarded as follows:

Submit original invoice(s) for payment to:	Send copy to:
U.S. Forest Service	
Albuquerque Service Center	USDA Forest Service
Payments - Grants & Agreements	National Forest
101B Sun Avenue NE	
Albuquerque, NM 87109	
FAX: (877) 687-4894	Phone:
	E-Mail:

20. ADVANCE PAYMENT. The cooperator is approved to submit requests for advance payments on a _____ basis, for the Forest Service's proportionate share _____ percent of anticipated actual expenses, not to exceed \$ _____, reduced by program income, and other Federal and nonfederal cash contributions, as shown in the incorporated Financial Plan. If program income generated from the project exceeds the cooperator's actual expenses, the Forest Service share is zero. The Forest Service will make advance payment upon receipt of an invoice. The first invoice may request an advance based upon estimated cost no to exceed 30 days expenditures. Each subsequent invoice shall display the cooperator's (1) additional advance funding, if needed, and (2) the actual expenses incurred to date of the invoice (not just the Forest Service share of actual expenditures), displayed by separate cost elements as documented in the Financial Plan, less

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program income and other Federal and nonfederal cash contributions and previous Forest Service payments. Any funds advanced, but not spent, upon expiration of this instrument shall be returned to the Forest Service. The invoice should be forwarded as follows:

- a. Send an original to:
- b. Send a copy to:

21. ENDORSEMENT. Any cooperator contributions made under this instrument do not by direct reference or implication convey Forest Service endorsement of the cooperator's product or activities.
22. ALTERNATE DISPUTE RESOLUTION. In the event of any issue of controversy under this Agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to, conciliation, facilitation, mediation, and fact finding.
23. ANNUAL OPERATING/FINANCIAL PLAN. The attached AOP/financial plan is hereby incorporated and becomes a part of this agreement.
24. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of last signature and is effective through _____ at which time it will expire unless extended.
25. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

USDA FOREST SERVICE

DATE

DATE

The authority and format of this instrument has been reviewed and approved for signature.

DATE

FS Agreements Coordinator

Job Code - - \$

BURDEN AND NONDISCRIMINATION STATEMENTS

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-NEW. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.